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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,012	03/12/2001	William R. Bennett	SP-1080.2 US	8880

7590

01/08/2004

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EXAMINER

MERCADO, JULIAN A

ART UNIT

PAPER NUMBER

1745

DATE MAILED: 01/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/804,012

Applicant(s)

BENNETT ET AL.

Examiner

Julian Mercado

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-4, 12-27 and 29 is/are allowed.
- 6) ☐ Claim(s) 5-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Remarks

This Office action is responsive to applicant's amendment filed November 11, 2003.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 7 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a step along said side wall, does not reasonably provide enablement for "at least one step along said side wall" in line 7 of the claim.

The rejection is maintained for the reasons of record. Applicant appears to rely on U.S. Pat. 6,203,943, U.S. Pat. 4,664,993 and U.S. Pat. 2,546,379 as a basis for establishing that the skilled artisan would find forming additional steps along the side wall as enabling without undue experimentation. This is not persuasive, as the enablement requirement under 35 U.S.C. 112, first paragraph requires such basis as part of the original written disclosure. Additionally, any reliance on the abovementioned U.S. Patents would raise the issue of new matter through incorporation by reference.

Claim Rejections - 35 USC § 102 and 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Sauer et al. (U.S. Pat. 4,054,726).

Claims 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Mansfield, Jr. et al. (U.S. Pat. 5,279,905).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Sauer et al. as applied to claim 5 above, in view of Bennett (U.S. Pat. 5,846,672).

Claims 6, 8, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield, Jr. et al. as applied to claims 5 and 7 above, in view of Bennett.

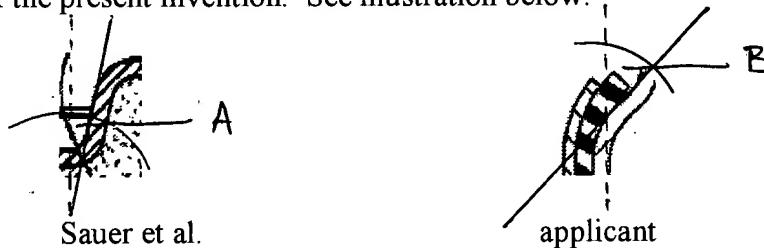
Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield, Jr. et al. and Bennett as applied to claims 5-9 and 11 above, and further in view of Oltman et al. (U.S. Pat. 5,567,538).

The above rejections have been discussed in detail in the previous Office action. As the scope of the present claims are presented unamended from those considered in the previous Office action, the prior art rejections are maintained for the reasons and for the additional reasons to follow in response to applicant's salient arguments. Applicant's arguments have been fully considered but are not found persuasive for the following reasons.

Applicant submits that in Sauer et al. the vertical portion between the step and the closed end of the anode "forms an angle of approximately 15 degrees" while the present invention is based on a disclosure wherein "substantially vertical" means no more than about 6 degrees from the vertical. However, a review of Sauer et al.'s disclosure reveals no basis for the vertical portion forming an alleged angle of approximately 15 degrees. It appears to the examiner that applicant's assertion is based on an approximation of such angle as shown in Figure 1 of Sauer et

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al. Contrary to applicant's estimation, Sauer et al. is maintained to teach a substantially vertical portion in view of Figure 1 wherein the angle of the step vertical is within applicant's definition thereof as being no more than about 6 degrees from the vertical, especially in view of the angle in Sauer et al. actually being smaller, i.e. more acute from the vertical than that depicted in Figures 1 and 2 of the present invention. See illustration below:



As shown in the illustration, angle A is smaller than angle B and it is concluded that the vertical portion of the step in Sauer et al. is comfortably less than the same disclosed by applicant and therefore is also within the definition of "substantially vertical" as being no more than about 6 degrees from the vertical.

Applicant submits that because Mansfield, Jr. et al. is not drawn to scale the use of relative dimensions as a basis for rejection is improper. However, even assuming *arguendo* that Mansfield, Jr. et al. is not drawn to scale, the examiner asserts that the present ground of rejection relies not on a dimensional scale but rather on *spatial* relations between the internal diameter [A] of the open end and the external diameter [B]. (emphasis added) The internal diameter [A] is maintained to be larger than the external diameter [B] (see the Figure) and this spatial relationship would be present in Mansfield, Jr. et al.'s disclosure irrespective of the degree in which the internal diameter [A] is greater than the external diameter [B].

As to Bennett, applicant submits that the combination relied upon by the Office action with Bennett as a secondary reference would result in a smaller internal diameter at the lower

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end than a maximum external diameter above the step. This is not persuasive, as an internal diameter larger than a maximum external diameter is taught by either of the primary references Sauer et al. and Mansfield, Jr. et al. The ground of rejection based on the secondary teachings of Bennett rely on the *height* of the step (as required by claim 6) and not any effect the step may have on the internal diameter of the can. (emphasis added) Even so, the maximum external diameter in either Sauer et al. or Mansfield, Jr. et al. cannot extend beyond the internal diameter of the anode cup, as the lateral curvature [1] in Sauer et al. or the same [32] in Mansfield, Jr. et al. restrain the external diameter from extending beyond its boundaries.

The examiner notes that arguments against Oltman et al. appear to be directed solely to this reference failing to remedy alleged differences between the claimed invention and Mansfield, Jr. et al. and Bennett. As Mansfield, Jr. et al. and Bennett are maintained for the reasons set forth above, the combined teachings are believed to teach or at least suggest the presently claimed invention, thereby negating any alleged differences.

Allowable Subject Matter

Claims 1-4, 12-27 and 29 are allowed for the reasons set forth in the prior Office action.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Mercado whose telephone number is (571) 272-1289. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



jam



Patrick Ryan
Supervisory Patent Examiner
Technology Center